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Date of Decision: 14th September 1995

SPECIAL CIVIL APPLICATION NO. 7127 of 1991

FOR APPROVAL AND SIGNATURE

THE HONOURABLE MR. JUSTICE A.N. DIVECHA

1. Whether Reporters of Local Papers may be allowed to see the judgment? No
2. To be referred to the Reporter or not? No
3. Whether their Lordships wish to see the fair copy of judgment? No
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 or any order made thereunder? No
5. Whether it is to be circulated to the Civil Judge? No

Kum. V.P. Shah, Advocate, for the Petitioner

Shri Prashant G. Desai, Advocate, for the Respondents

CORAM: A.N. DIVECHA, J.
(Date: 14th September 1995)

ORAL JUDGMENT

The order passed by and on behalf of the respondents on 14th August 1991 rejecting the building permission to the petitioner for construction on her land is under challenge in this petition under Art. 226 of the Constitution of India.

2. It is not necessary to set out in detail the facts giving rise to this petition. On behalf of the petitioner, an

application for building permission for construction on her land was made. It was accompanied by the necessary building plans. By the order passed on 14th August 1991, such permission was rejected on the ground that the land in question was contemplated to be acquired. Its copy is at Annexure D to this petition. The aggrieved petitioner has questioned its correctness by means of this petition under Art. 226 of the Constitution of India.

3. It may be mentioned that, by an interim order, this court directed the respondents to consider that application for building permission and approval of the building plans de hors the contemplated acquisition. Thereupon one order came to be passed on 24th October 1991 rejecting such permission on account of several objections found in the building plans. Its copy is at Annexure 1 to the affidavit-in-reply filed on behalf of the respondents. It is not in dispute that the objections mentioned therein have not been removed by or on behalf of the petitioner presumably because of pendency of this petition before this court.

4. The question whether or not the building permission can be refused on the ground of contemplated acquisition is no longer res integra. In its Division Bench ruling in the case of Surat Municipal Corporation and Another v. Bhikhabhai Morarbhay Patel and Others reported in 1994(2) 35(2) G.L.R. 947 this court has held that the contemplated acquisition under sec. 78 of the Bombay Provincial Municipal Corporations Act, 1949 is no ground to refuse building permission. In that view of the matter, the impugned order at Annexure D to this petition cannot be sustained in law for a single moment.

5. It is however the case of the respondents that the building permission has been refused on account of objections raised on the basis of the building plans submitted therewith in terms of the communication at Annexure 1 to the affidavit-in-reply filed on behalf of the respondents in this case. That communication was issued more than 3 1/2 years ago. It might be too stale at this stage to require the respondents to consider the building permission afresh after objections found therein are removed. Instead, it would be quite proper to direct the petitioner to make a fresh application for building permission together with the necessary building plans. It would be desirable on the part of the respondents to point out defects, if any, or raise objections, if any, with respect to such building plans at a stretch and not on a piecemeal basis. The building permission together with the building plans made by or on behalf of the petitioner shall be considered on their own merits uninfluenced by any contemplated or proposed acquisition in view of the aforesaid Division Bench ruling of this court. It is clarified by way of abundant caution that the building

permission cannot and need not be refused on the ground of any contemplated or proposed acquisition.

6. In view of my aforesaid discussion, I am of the opinion that the petition deserves to be accepted only to the limited extent of quashing and setting aside the impugned order at Annexure D to this petition. The parties are required to act according to law in the light of this judgment of mine.

7. In the result, this petition is accepted to the aforesaid limited extent. The order passed by and on behalf of the respondents on 14th August 1991 at Annexure D to this petition is quashed and set aside. The respondents are directed to act according to law in the light of this judgment of mine as and when an application for building permission together with the necessary building plans is presented by or on behalf of the petitioner. Rule is accordingly made absolute to the aforesaid limited extent with no order as to costs.
